

# Massachusetts Public Records Law

Commonwealth of Massachusetts  
Public Employee Retirement Administration Commission



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Public Employee Retirement Administration Commission

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## Massachusetts Public Records Law

Robert Ritchie, *Director of the Municipal Law Division, Office of the Attorney General*

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## Introductory Letter

We are here today not only to discuss the *definition* of “public records” and the *rules* that govern our custody and disclosure of them. Our more important purpose today is to urge you to a deeper appreciation of how important public records are to our way of life in this great country and state, and to you personally in the performance of your public service.

Were we to content ourselves with merely knowing and honoring the *letter* of the public records laws, we would deprive not only the public but ourselves of the true richness that comes from honoring the *spirit* of open government reflected in those laws.

Knowing what is a public record and how we are to discharge our legal obligations with respect to the public records in our custody requires at a minimum that we are familiar with the following two statutes:

General Laws, Chapter 4, Section 7, clause 26 (for the very broad definition of “public record,” accompanied by a detailed listing of the *exemptions* from that definition); and

General Laws, Chapter 66, Section 10 (for a detailed explanation of the rights of the public to access public records and the duties of public records custodians).

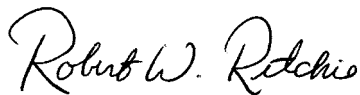
We must, moreover, be familiar with and comply with the Records Retention Schedules of the Records Conservation Board that apply to our particular public functions.

Knowing and complying with these laws and schedules is an indispensable starting point; but a starting point nonetheless. These are but the *minimum standards* that should guide us as public records custodians. We owe it to the public and to ourselves to set our sights higher.

As public officials and government employees our ability to carry out our official functions efficiently and effectively is directly correlated to the extent to which we earn the trust and confidence of the public. If my approach to the public records laws, the open meeting laws, and the conflict of interest laws is limited to merely complying with their minimum requirements, I will have done no more than protect myself from liability. If I am seen as one who is secretive about the records in my custody, who prefers to do business behind closed doors or in executive session, or whose public and private activities are suspiciously close to the limits allowed by law, I will needlessly burden my ability to do my job efficiently and effectively. I will have deprived myself of the benefit of any doubt.

But if I have the reputation as one who goes the extra distance, one who educates the public about their right to access the records of their government, one who is willing to make conveniently available records to which the public has a legal right of access, one who makes those records available with that extra little bit of helpfulness, and to do so sooner than may be required by law; – if I have that kind of reputation, to that same extent will I have earned the benefit of any future doubt about my performance as a public officer or employee. When questions are later asked about whether a record in my custody is properly exempt from disclosure, such a reputation will serve me well. My determination that a record is exempt from disclosure will be more credible and my judgment in the matter more readily accepted. This is important because almost certainly there will be situations where non-disclosure is not only allowed but is also required. In those circumstances we will want the confidence of those seeking the record that you are making legal, wise determinations of non-disclosure.

As we begin our day together to understand the public records law and its relationship to you, I urge you not only to a full understanding of the law, but to a fuller understanding of its purposes; and then, to aspire to those purposes beyond the letter of the law.

A handwritten signature in black ink that reads "Robert W. Ritchie". The signature is written in a cursive, flowing style with a large initial 'R'.

Robert Ritchie

*Director of the Municipal Law Division  
Office of the Attorney General*

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*The materials that follow have been excerpted from “A Guide to the Massachusetts Public Records Law,” published by the Secretary of the Commonwealth. You will find the Secretary’s Supervisor of Public Records to be an indispensable resource to you on matters relating to your duties and responsibility under the law. In addition to the Guide, informal guidance is available from the Supervisor’s Office. It is always better to ask before acting, and this is the place to call. The Supervisor’s Office is located on in the State Office Building at One Ashburton Place in Boston, and the telephone number is: 617-727-2832.*

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## Commonly Asked Questions about Massachusetts Public Records

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### **Do I contact the Division of Public Records to obtain copies of public records?**

The Division of Public Records (Division) is not a warehouse for all government records. The only records that are kept in the Division are those that are essential to the business operations of the Division. The Division of Public Records and specifically, the Supervisor of Public Records (Supervisor), is required to determine the public records status of government records. However, the Supervisor does not have jurisdiction over records held by federal agencies, the Legislature or the courts of the Commonwealth.

To obtain copies of records, you must first make a request to the state or local agency, board, or other government entity that has the records you are interested in. For example, if you are interested in obtaining a copy of the minutes of an open meeting of a local board, you should direct your request to that board. Similarly, a request for a copy of the police log would be directed to the appropriate police department.

A custodian has ten (10) calendar days to respond to your request. A failure to respond within the allotted time period, or a denial in writing from the custodian, allows a requester to appeal to the Supervisor of Public Records. In order to appeal to the Supervisor, you must send a copy of your request letter, with copies of any correspondence provided by the custodian within ninety (90) days. An administrative appeal will then be opened. If the Supervisor determines that the records are public, he or she may order the custodian to provide the records, if necessary.

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### **Can you tell me which records held by my local town hall should be made available upon request?**

Every record made or received by a government entity is presumed to be a public record, unless it is subject to an exemption. The exemptions to the Public Records Law are described in this booklet. The custodian has the burden of claiming an exemption and showing why it applies. In other words, if you request certain records from a local official, there is a presumption that the record is public. The local official should either give you a copy of the requested record, or provide you with an explanation of why it is not public. You may appeal a decision that the record is not public in the manner described above.

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### **Do I have to put my request for public records in writing?**

No. An oral request, made in person (not by telephone) is valid under the Public Records Law. However, in order to appeal the custodian's failure to provide copies or access to records, your original request must be in writing. For this reason, it is advisable to put your request in writing. A written request that is clear and concise also helps the custodian to respond to your request in a timely and efficient manner.

There isn't a specific form that must be used to request records, nor is there any language which must be included in your request. A request for access to, or copies of, government records sent to a record custodian should be treated as a public records request.

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### **I asked a local official a question about his office, but he didn't answer. Can I appeal his refusal under the Public Records Law?**

No. The Public Records Law only applies to records which are in existence and in the custody of a government official. This means that an official is not required to answer questions, nor is he required to create a record in response to a request. However, if you request documents from that official and he does not respond, you may appeal that denial in the manner described above.

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### **How much may a custodian charge for copies of public records?**

Unless specifically addressed by statute, a custodian may charge twenty cents (\$.20) a page for photocopies, twenty-five cents (\$.25) a page for microfilm copies and fifty cents (\$.50) a page for computer printouts. The actual cost incurred by the custodian may be charged for records "not susceptible to ordinary means of reproduction," such as computer records, or oversized documents.

A custodian may also charge for the time it takes to search for the records, remove any exempt data, photocopy the record and refile it. The charge for this process must be the prorated hourly wage of the lowest paid employee capable of performing the task. A custodian may waive the fees whenever he or she chooses, but is not mandated to do so. A custodian should also provide a written good faith estimate for the cost of complying with a request where the total cost is expected to exceed ten dollars (\$10.00). The estimate should provide a breakdown of the expected expenses.

Examples of statutes which establish fees for specific public records include: G. L. c. 66, § 10(a) [copies of police records], and G. L. c. 262, § 38 [copies of records at the Registry of Deeds].

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### **Do minutes of open meetings of local boards or commissions have to be approved before they can be made available to the public?**

No. Minutes of open meetings become public upon creation. There is no requirement that these minutes be approved before they are made available to the public. A board or commission is advised to mark copies of minutes not yet approved as "draft" minutes, however it cannot withhold those minutes from disclosure. If the minutes are not transcribed at the time a request is made, there is no



requirement under the Public Records Law that the board transcribe those minutes in response to a request. However, the audio tape of the meeting or any notes taken by the recording secretary (including shorthand notes) are public records.

Any questions regarding the content of minutes, requirements to keep minutes or any procedural aspects of the Open Meeting Law should be addressed to the local District Attorney.

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**I did not receive an estimate for the cost of responding to my request; does that mean I get the records for free?**

No. Regulations require that a custodian provide a written, good-faith estimate for the cost of complying with a public records request when the cost of compliance is expected to exceed ten dollars (\$10.00). The purpose of this requirement is twofold. First, it lets the requester know how much money is involved in responding to the request. In cases where the cost is a lot more money than expected, a requester may want to limit his request. An estimate also helps the custodian by making it clear how much work is involved in compliance. A custodian may require prepayment of this fee prior to beginning the process of compiling the records. There are no sanctions in the law, however, for a failure to provide an estimate.

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**Does the Public Records Law apply to computer records?**

Yes. The term “public records” is defined by statute to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any municipality or agency of the Commonwealth, unless falling within a statutory exemption. Therefore, the Public Records Law clearly applies to government records generated, received, or maintained electronically.

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**I am a criminal defendant; doesn't that give me greater access rights to records about my case?**

No. Under the Public Records Law, every requester is treated equally. A criminal defendant isn't granted any greater access rights to records concerning his or her case. Moreover, neither the press, nor an elected official has greater access rights to records under the Public Records Law.

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**Do I have to tell the custodian what I plan to do with the records once he provides me with copies?**

No. A custodian cannot ask a requester why he wants specific records or what he plans to do with the records once received.

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**I am a custodian who has received a request for records but I can't figure out what type of records the requester is looking for. What should I do?**

A custodian is required to use his or her superior knowledge of the records to determine which records are responsive to a request. However, a requester should provide a reasonable description of the desired records. You should inform the requester that you are unable to identify responsive records when you receive a request that is too vague. However, a request that is broad or voluminous is valid.

As stated above, the Public Records Law only applies to records which are in existence and in the custody of a government agency. Therefore, a custodian is not required to create records in response to a request. A custodian may create a record in response, but he or she is not required to do so.

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## Overview of the Massachusetts Public Records Law

The Massachusetts Public Records Law provides that any person has an absolute right of access to public information.<sup>(1)</sup> This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.<sup>(2)</sup>

The Massachusetts General Laws broadly define “public records” to include all documentary materials or data, regardless of physical form or characteristics, which are made or received by any officer or employee of any Massachusetts governmental entity.<sup>(3)</sup> As a result, all photographs, papers and electronic storage media of which a governmental employee is the “custodian” constitute “public records.”<sup>(4)</sup> There are, however, twelve narrowly construed exemptions to this broad definition of “public records.”<sup>(5)</sup> This booklet will briefly review the application of these exemptions as well as explore some of the other issues which arise when a request is made for access to government records.

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## The Request

There are no strict rules that govern the manner in which requests for public information should be made. Requests may be oral or written and may be made in person or through the mail.<sup>(6)</sup> A requester is not required to specifically identify a particular record: any request which provides the custodian with a reasonable description of the desired information is sufficient.<sup>(7)</sup> A custodian is expected to use his superior knowledge of the records in his custody to assist the requester in obtaining the desired information.<sup>(8)</sup>

All requests must receive a response as soon as practicable, without unreasonable delay and always within ten days.<sup>(9)</sup> The response must be either an offer to provide the requested materials or a written denial. A denial must detail the specific legal basis for withholding the requested materials.<sup>(10)</sup>

The legal basis must include a citation to the statutory exemption upon which the custodian relies and must also explain why the exemption applies.<sup>(11)</sup> A denial must also advise the requester of his right to seek redress through the administrative process provided by the Office of the Supervisor of Public Records.<sup>(12)</sup>

The mandatory disclosure provision of the Public Records Law only applies to information which is in the custody of the governmental entity at the time the request is received.<sup>(13)</sup> Consequently, there is no obligation to create a record for a requester or to honor prospective requests. It should be noted, however, that there is nothing which prohibits a custodian from responding to such requests.

A custodian's role in responding to a request is limited to the responsibilities already described. Inquiries into a requester's status or motivation for seeking information are expressly prohibited.<sup>(14)</sup> Consequently, all requests for public records, even if made for a commercial purpose or to assist the requester in a law suit against the holder of the records, must be honored in accordance with the prescriptions of the Public Records Law.

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## Fees

A custodian is allowed to charge a reasonable fee to recover the costs of complying with a public records request.<sup>(15)</sup> It should be noted that a custodian is encouraged, but not mandated, to waive fees where disclosure is in the public interest.<sup>(16)</sup> If a custodian chooses to assess a fee, he or she must do so in accordance with any applicable statutory provisions or the Public Records Access Regulations (Regulations).<sup>(17)</sup> The Regulations provide that, for performing a search for requested records or segregating exempt information from non-exempt information which is contained in a requested record, a custodian may charge a pro-rated fee based on the hourly rate of the lowest paid employee who is capable of performing the task.<sup>(18)</sup> "Search time" is limited to the time needed to locate a requested record, pull it from the files, copy it and return it to the files.<sup>(19)</sup> "Segregation time" is limited to the time needed to delete exempt items from a requested record.<sup>(20)</sup>

The Supervisor will presume that the lowest paid employee in an agency is capable of performing "search time." Accordingly, except where exceptional circumstances are present, it is expected that the hourly rate of the lowest paid office employee will be used to calculate "search time." In some circumstances, the lowest paid office employee may not have the knowledge or experience required to segregate the exempt information from the non-exempt information contained in a requested record. Usually, guidance on the application of the relevant exemptions can be provided to the lowest paid employee. In very complex or difficult cases, however, the hourly rate of the lowest paid employee who has the necessary knowledge or experience may be used to determine the fee for "segregation time."

In addition to the labor fees, a twenty cents (20¢) per page copying fee may be assessed for a photocopy.<sup>(21)</sup> When the request is for materials which are not susceptible to ordinary means of reproduction, such as photographs or computer tapes and diskettes, the actual cost of reproduction may be assessed to the requester.<sup>(22)</sup> The fee for a computer printout, however, is fifty cents (50¢) per page regardless of the amount of time used to generate the printout.<sup>(23)</sup>

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## The Exemptions

The statutory definition of “public records” contains twelve exemptions which provide bases for withholding records in whole or in part.<sup>(24)</sup> The exemptions are strictly and narrowly construed.<sup>(25)</sup> Where exempt information is intertwined with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are deleted.<sup>(26)</sup> A review of the appropriate applications of the exemptions follows.

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### Exemption (a)

Exemption (a), also known as the statutory exemption, provides a basis for withholding from disclosure those documents which are:

*specifically or by necessary implication exempted from disclosure by statute.*<sup>(27)</sup>

An agency may use the statutory exemption as a basis for withholding requested materials where the language of the statute of exemption relied upon expressly states or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted.<sup>(28)</sup>

Essentially, the exemption creates two categories of exempt records: records that are specifically exempted from disclosure and those which are exempt by necessary implication.<sup>(29)</sup> Statutes which specifically exempt a record are those which expressly state that a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”<sup>(30)</sup> Statutes which exempt records by necessary implication contain language which expressly limits the dissemination of particular records to a defined group of individuals or entities.<sup>(31)</sup> A statute will not provide a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; it must expressly limit access to the listed individuals or entities.

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### Exemption (b)

Exemption (b) applies to those records which are:

*related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.*<sup>(32)</sup>

There are no authoritative Massachusetts decisions interpreting exemption (b). The general purpose of the cognate federal exemption, however, is merely to relieve agencies of the burden of assembling and maintaining for public inspection matters in which the public cannot reasonably be expected to have a legitimate interest.<sup>(33)</sup> Materials relating to matters such as personnel’s use of parking facilities, regulation of lunch hours and statements of policies concerning sick leave are examples of the types of records to which the federal exemption applies.<sup>(34)</sup>

The language of the federal provision is duplicated in the first clause of exemption (b). The second clause of exemption (b), however, contains language which requires a more restrictive application. The addition of the qualifying second clause of exemption (b) evidences a legislative intent to create an exemption which is narrower in scope than the previously enacted, parallel federal exemption.<sup>(35)</sup> Therefore, in Massachusetts a record custodian must demonstrate that the proper performance of necessary governmental functions requires the withholding of the requested information for the exemption to apply.

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### **Exemption (c)**

Exemption (c), the privacy exemption, is the most frequently invoked exemption. The language of the exemption limits its application to:

*personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.*<sup>(36)</sup>

The privacy exemption contains two distinct and independent clauses, each requiring its own analysis.<sup>(37)</sup> The first clause creates a categorical exemption for personnel and medical information which relates to an identifiable individual and is of a “personal nature.”<sup>(38)</sup> As a general rule, medical information will always be of a sufficiently personal nature to warrant exemption.<sup>(39)</sup> Any personnel information which is useful in making employment decisions regarding an employee is sufficiently personal to be exempt pursuant to the first clause.<sup>(40)</sup> Such information includes employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information.<sup>(41)</sup> However, administrative information typically contained in an employee’s personnel file, such as an employee’s name, home address, and date of birth, is not personnel information which is sufficiently personal to be exempt.<sup>(42)</sup> Further, public employees have a diminished expectation of privacy in matters relating to their public employment.<sup>(43)</sup> Consequently, the public will have greater access to information that relates to an individual’s public employment than to the same individual’s private activities.<sup>(44)</sup> For example, an individual’s public employment salary is a public record but the source or amount of private income generally is not public information.<sup>(45)</sup>

The second clause of the privacy exemption applies to requests for records that implicate privacy interests but do not involve personnel and medical records. Its application is limited to “intimate details of a highly personal nature.”<sup>(46)</sup> Examples of “intimate details of a highly personal nature” include marital status, paternity, substance abuse, government assistance, family disputes and reputation.<sup>(47)</sup> Portions of records containing such information are exempt unless there is a paramount public interest in disclosure.<sup>(48)</sup> Therefore, when applying the second clause of the exemption to requested records it is necessary to perform a two-step analysis: first, determine whether the information constitutes an “intimate detail of a highly personal nature”; and second, determine whether the public interest in disclosure outweighs the privacy interest associated with disclosure of the highly personal information. Consequently, the application of the second clause of the exemption can only be determined on a case by case basis.

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### **Exemption (d)**

Exemption (d), the deliberative process exemption, provides a limited executive privilege for policy development. It applies to:

*inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.*<sup>(49)</sup>

The exemption is intended to avoid release of materials which could taint the deliberative process if prematurely disclosed. Therefore, its application is limited to recommendations on legal and policy matters found within an ongoing deliberative process.<sup>(50)</sup> Purely factual matters used in the development of government policy are always subject to disclosure.<sup>(51)</sup> Factual reports which are reasonably complete and inferences which can be drawn from factual investigations, even if labeled as opinions or conclusions, are not exempt as deliberative or policy making materials.<sup>(52)</sup> Therefore, only those portions of materials that possess a deliberative or policymaking character and relate to an ongoing deliberative process are exempt from mandatory disclosure.

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### **Exemption (e)**

Exemption (e) allows the withholding of:

*notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit.*<sup>(53)</sup>

The application of exemption (e) is limited to records which are work-related but can be characterized as personal to an employee. Examples of materials which are covered by the exemption include personal reflections on work-related activities and notes created by an employee to assist him in preparing reports for other employees or the files of the governmental entity. Clearly, however, the exemption may not be used to withhold any materials that are shared with other employees or are being maintained as part of the files of a governmental unit.<sup>(54)</sup>

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### **Exemption (f)**

Exemption (f), the investigatory exemption, provides a basis for withholding:

*investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.*<sup>(55)</sup>

The exemption allows investigative officials to withhold materials which could compromise investigative efforts if disclosed. There is no blanket exemption, however, for records created or maintained by investigative officials.<sup>(56)</sup> Therefore, a custodian must demonstrate a prejudice to investigative efforts in order to withhold requested materials. Accordingly, any information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Also, any confidential investigative techniques may be withheld indefinitely since their disclosure would prejudice future law enforcement efforts.<sup>(57)</sup>

The exemption is also designed to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly about matters under investigation.<sup>(58)</sup> Accordingly, any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness are indefinitely exempt.<sup>(59)</sup>

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### **Exemption (g)**

Exemption (g) applies to:

*trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit.*<sup>(60)</sup>

Each of the six criteria contained in the exemption must be met for it to apply. Consequently, where trade secrets or commercial or financial information are provided to the government in connection with a contract bid or in compliance with a filing requirement the exemption will not allow the withholding of the information.<sup>(61)</sup> To be exempt, trade secrets and commercial or financial information must be provided voluntarily, upon an assurance of confidentiality and solely to assist the government in the development of policy.

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### **Exemption (h)**

Exemption (h) is designed to ensure the integrity of processes used by government to procure goods and services by allowing a custodian to withhold the proposals of early bidders from other interested parties.<sup>(62)</sup> Specifically, it allows custodians to withhold:

*proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or toward a contract to, a particular person.*<sup>(63)</sup>

The exemption addresses two types of records, each with its own time frame. Proposals and bids are exempt from disclosure until the deadline for their submission passes. This prevents late bidders from gaining an unfair competitive advantage over early bidders. The limitation on the duration of the exemption provides the public an opportunity to review the rejected proposals to ensure that tax dollars are wisely spent. The second clause of the exemption is similar to exemption (d) in its application.<sup>(64)</sup> It allows government officials to review bids and proposals in an insulated environment, but also provides for public review of all evaluative materials once a decision is made either to enter into negotiations with the successful bidder or to award the contract.

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### **Exemption (i)**

Exemption (i) recognizes the need for confidentiality for those real estate appraisals relating to parcels which the government seeks to obtain either through a purchase or an eminent domain

proceeding. Its application, however, is limited to a defined time period. Specifically, the exemption applies to:

*appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.*<sup>(65)</sup>

The exemption applies to any estimation of value of property which involves an expert opinion.<sup>(66)</sup> It allows the government to be in the same position in a land deal as any private party. Obviously, parties to a land deal could be at a bargaining disadvantage if required to disclose their appraisals of the subject parcel. The exemption ensures that the government will not be at a bargaining disadvantage by allowing the other party to use the Public Records Law to gain access to an appraisal prior to completion of negotiations or litigation.

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### **Exemption (j)**

Exemption (j) allows custodians of firearms records to withhold from disclosure:

*the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.*<sup>(67)</sup>

The exemption prevents individuals with devious motives from ascertaining who possesses firearms. It should be noted, however, that the scope of the exemption limits its application to identifying details.<sup>(68)</sup> Therefore, once identifying details are deleted, the remaining portions of firearms records are subject to mandatory disclosure.

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### **Exemption (k)**

Exemption (k), which addressed “that part of the registration or circulation records of every public library which reveals the identity of a borrower” has been repealed by the Legislature.<sup>(69)</sup>

Although exemption (k) has been repealed, the Legislature retained the substance of the exemption in another section of the General Laws.<sup>(70)</sup> Consequently, this new statute operates through exemption (a) to provide a basis for denying access to library circulation records.

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### **Exemption (l)**

Exemption (l) provides a basis for withholding from disclosure:

*questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument.*<sup>(71)</sup>



This exemption which was previously restricted to licensing examinations was recently amended. Exemption (l) now ensures that no one who takes an examination can gain an advantage by using the Public Records Law to access the questions and answers of upcoming tests.

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### **Exemption (m)**

Exemption (m) applies to:

*contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a non-profit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.<sup>(72)</sup>*

Although the provision of exemption (m) has yet to be interpreted by Massachusetts courts, the language of the exemption is clear.

Exemption (m) contains four criteria that must be met in order for a record to be withheld thereby. First, the record must be a contract. Second, that contract must be for hospital or related health care services. Third, one of the contracting parties must be a government operated medical facility. Finally, the party providing services must be one of the entities described by the exemption. Exemption (m) allows the withholding of a record only if that record satisfies all four criteria.

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## **Computer Records**

The Public Records Law was drafted at a time when legislators could not have envisioned the impact computers would have on the government's ability to collect, store, compile and disseminate information.<sup>(73)</sup> The legal principles embodied in the Public Records Law, however, may be readily transposed into legal principles governing access to information maintained in an automated system.

The statutory definition of "public records" does not distinguish between traditional paper records and records stored in the computer medium.<sup>(74)</sup> Rather, it provides that all information made or received by a public entity, regardless of the manner in which it exists, constitutes "public records." Computer cards, tapes or diskettes are all independent public records which are subject to the same requirements of the Public Records Law as are paper records. Therefore, a custodian is obliged to furnish copies of non-exempt portions of computerized information at the cost of reproduction unless otherwise provided by law.

It should be noted, however, that just as a custodian is not required to create a paper record in response to a request for information, a custodian is not required to create a computer record in response to a request for information. Conceptually, a computer is like a large filing cabinet. The "files" in the cabinet consist of any compilations of information contained on a tape or a diskette which can

be independently retrieved through the use of existing computer programs. A custodian is only obliged to provide access to the existing “files” of a cabinet. Therefore, a custodian is not required to create a new computer program to provide a requester with computerized information in a desired format. There is, however, an exception to this general rule when the reprogramming is needed to comply with the segregation provision of the law.

For example, suppose a request is made for a computer diskette which references all woman homeowners who also own dogs. The custodian, however, does not have a computer program which allows him to combine his dog license information with the assessor files to select the desired information. Providing the requested information in the desired format requires the creation of a new program. In this situation, the custodian is only obliged to notify the requester that there is no specific record which is responsive to his request. The custodian should also advise the requester of the available formats and let the requester determine which of the existing formats or “files” is best suited for his needs.<sup>(75)</sup>

It should be noted there is nothing which prevents a custodian from creating a program which will generate requested information in the desired format. In fact, the custodian can benefit from such an arrangement. Since the creation of records, including the honoring of prospective requests are not governed by the Public Records Law, including its maximum fee limitations, the custodian is free to negotiate all terms of the arrangement.<sup>(76)</sup> Consequently, when a requester is willing to pay for the creation of a program, the custodian is able to add a new program to his library without any expense to the government. Once that program is created, future requests for the same information would fall within the fees set by regulation.

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## The Supervisor of Public Records

A requester who is denied access to any requested information may petition the Supervisor for a review of the request. The Supervisor will then instruct a staff member, usually a lawyer or a legal intern, to contact the custodian and requester to ascertain the relevant facts and discuss the applicable law. The findings of the staff attorney are then reported to the Supervisor to assist her in making a decision. The custodian will receive an administrative order if the Supervisor determines that records are being improperly withheld or the proposed fee is excessive.<sup>(77)</sup> If the custodian does not comply with the Supervisor’s order, the case may be referred to the Department of the Attorney General or appropriate district attorney for enforcement in court.<sup>(78)</sup>

A custodian may request a formal written advisory opinion from the Supervisor at any time.<sup>(79)</sup> The request should be in writing and provide a brief description of the records.<sup>(80)</sup> A requester may also seek an informal opinion from the Supervisor’s staff at any time. The number to call is (617) 727-2832, between 8:45 a.m. and 5:00 p.m.

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## End Notes

All statutory references are to the 1998 Edition of the Massachusetts General Laws.

1. G. L. c. 66, § 10(a).
2. *Id.*
3. G. L. c. 4, § 7(26).
4. *Id.*; See 950 C.M.R. 32.03 (defining “custodian” as the government employee who has access to or control of public records).
5. G. L. c. 4, § 7(26)(a-m); see also *Attorney General v. Assistant Commissioner of the Real Property Department of Boston*, 380 Mass. 623, 625 (1980)(the statutory exemptions are to be strictly and narrowly construed).
6. G. L. c. 66, § 10(b); 950 C.M.R. 32.05(3).
7. 950 C.M.R. 32.05(4).
8. *Id.*
9. G. L. c. 66, § 10(a-b); 950 C.M.R. 32.05(2).
10. 950 C.M.R. 32.08(1).
11. *Id.*
12. *Id.*
13. G. L. c. 4, § 7(26)(defining “public records” as materials which have already been “made or received” by a public entity); see also 32 Op. Att’y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information).
14. See G. L. c. 66, § 10(a)(public records are to be provided to “any person”); see also 950 C.M.R. 32.05(5)(custodian prohibited from inquiring into a requester’s status or motivation).
15. G. L. c. 66, § 10(a); see also 950 C.M.R. 32.06 (fees for copies of public records).
16. 950 C.M.R. 32.06(5).
17. See e.g., G. L. c. 66, § 10(a) (fees for police records); see also 950 C.M.R. 32.06 (fees for copies of public records).
18. 950 C.M.R. 32.06(1)(c).
19. 950 C.M.R. 32.03.
20. *Id.*
21. 950 C.M.R. 32.06(1)(a).
22. 950 C.M.R. 32.06(f); see also SPR Bulletin 4-96, June 7, 1996 (fees for copying electronic records).
23. 950 C.M.R. 32.06(d).
24. G. L. c. 4, § 7(26)(a-m).
25. *Real Property Department of Boston*, 380 Mass. at 625.
26. G. L. c. 66, § 10(a); *Reinstein v. Police Commissioner of Boston*, 378 Mass. 281, 289-90(1979)(none of the statutory exemptions provide a blanket exemption from disclosure).
27. G. L. c. 4, § 7(26)(a).
28. *Attorney General v. Collector of Lynn*, 377 Mass. 151, 154 (1979); *Ottaway Newspaper Company v. Appeals Court*, 372 Mass. 539, 545-46 (1977).
29. G. L. c. 4, § 7(26)(a).
30. See, e.g., G. L. c. 41, § 97D (all reports of rape or sexual assault “shall be confidential”).
31. See, e.g., G. L. c. 6, § 172 (“Criminal offender record information ... shall only be disseminated to: criminal justice agencies....”).

32. G. L. c. 4, § 7(26)(b).
33. Department of the Air Force v. Rose, 425 U.S. 352, 362-70 (1976).
34. Jordan v. Department of Justice, 591 F.2d 753, 763-71 (D.C.Cir. 1978) (construction of cognate federal provision).
35. See Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-33(1983) (where the language of a parallel state statute differs in material respects from a previously enacted federal statute, a rejection or expansion of the legal principles embodied in the federal statute may be inferred).
36. G. L. c. 4, § 7(26)(c).
37. Globe Newspaper Company, 388 Mass. at 432-34.
38. Id.; Brogan v. School Committee of Westport, 401 Mass. 306, 308 (1987).
39. Globe Newspaper Company, 388 Mass. at 442; see also Globe Newspaper Company v. Chief Medical Examiner, 404 Mass. 132 (1989) (autopsy reports constitute exempt medical information).
40. Wakefield Teachers Association v. School Committee of Wakefield, 431 Mass. 792, 798 (2000); see also Connolly v. Bromery, 15 Mass.App. Ct. 661, 664 (1983) (evaluative materials are of a particularly personal and volatile nature).
41. Wakefield, 431 Mass. at 798; see also Brogan, 401 Mass. at 308; Pottle v. School Committee of Braintree, 395 Mass. 861, 866 (1985); George W. Prescott Publishing Company v. Register of Probate for Norfolk County, 395 Mass. 274, 278 (1985); Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 436 n.15 (1983); Hastings & Sons Publishing Company v. City Treasurer of Lynn, 374 Mass. 812, 818 (1978).
42. Wakefield, 431 Mass. at 799.
43. Brogan, 401 Mass. at 308.
44. Hastings & Sons Publishing Company, 374 Mass. at 818.
45. Collector of Lynn, 377 Mass. at 156.
46. Real Property Department of Boston, 380 Mass. at 625.
47. Id. at 626 n.2.
48. Collector of Lynn, 377 Mass. at 156.
49. G. L. c. 4, § 7(26)(d).
50. Babets v. Secretary of the Executive Office of Human Services, 403 Mass. 230, 237 n.8 (1988).
51. See Environmental Protection Agency v. Mink, 410 U.S. 73, 89 (1973) (construing cognate federal provision).
52. Moore-McCormack Lines, Inc. v. I.T.O. Corporation of Baltimore, 508 F.2d 945, 948 (1974) (construing cognate federal provision).
53. G. L. c. 4, § 7(26)(e).
54. Id.
55. G. L. c. 4, § 7(26)(f).
56. District Attorney for the Norfolk District v. Flatley, 419 Mass. 507, 512 (1995); WBZ-TV4 v. District Attorney for the Suffolk District, 408 Mass. 595, 603 (1990).
57. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976); see also United States Department of Justice v. Landano, 113 S.Ct. 2014, 2020 (1993) (discussion of confidential sources of information under the federal Freedom of Information Act.).
58. Bougas, 371 Mass. at 62.
59. Globe Newspaper Company, 388 Mass. at 438 (explanation of “identifying details” and “grave risk of indirect identification”).
60. G. L. c. 4, § 7(26) (g).

61. Id.
62. See *Datatrol Inc. v. State Purchasing Agent*, 379 Mass. 679, 691 (1980) (the purposes of competitive bidding go beyond economy and efficient administration to the prevention of favoritism in the awarding of government contracts).
63. G. L. c. 4, § 7(26)(h).
64. See discussion of the application of exemption (d), supra p. 14.
65. G. L. c. 4, § 7(26)(i).
66. See BLACK'S LAW DICTIONARY 92 (5th ed. 1979)(definition of "appraisal").
67. G. L. c. 4, § 7(26)(j).
68. Id.
69. 1988 Mass Acts 180, § 2.
70. G. L. c. 78, § 7.
71. 1996 Mass. Acts 204, § 3 (July 30, 1996).
72. G. L. c. 4, § 7 (26)(m).
73. See 1973 Mass. Acts. 1050 (legislation providing for the current statutory definition of "public records").
74. G. L. c. 4, § 7(26).
75. See 950 C.M.R. 32.05(4)(a custodian shall use his superior knowledge of his files to assist a requester in obtaining the desired information).
76. See supra p. 7, note 13 (the Public Records Law and Regulations only apply to existing records; consequently, a custodian is free to set any fee for creating a record.).
77. G. L. c. 66, § 10(b).
78. G. L. c. 66, § 10(b); 950 C.M.R. 32.09.
79. 950 C.M.R. 32.07.
80. Id.

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## The Massachusetts Public Records Law

### **G. L. c. 4, § 7(26):**

“Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;
- (f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;
- (g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;
- (h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.

- (i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;
- (j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;
- (l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;
- (m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a non-profit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

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**G. L. c. 66, § 10:**

- (a) Every person having custody of any public record, as defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expenses of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages, plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

- (b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.
- (c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.
- (d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The commissioner of public safety and his agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, correctional and any other public safety and criminal justice system personnel shall not be public records in the custody of the employers of such personnel and shall not be disclosed; provided, however, that such information may be disclosed to an employee organization under chapter one hundred and fifty E or to a criminal justice agency as defined in section one hundred and sixty-seven of chapter six. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of any of the foregoing persons and shall not be disclosed. The home address and telephone number, or place of employment



or education of victims of adjudicated crimes and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

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## Related Statutes

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### **1973 Mass Acts c. 1050, § 6**

The provisions of clause twenty-sixth of section seven of chapter four of the General Laws, as amended by section one of this act, shall not be construed to exempt any record which was a public record on the effective date of this act from said clause twenty-sixth.

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### **G. L. c. 66, § 1 (1998 ed.)**

The supervisor of records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

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# 950 CMR: Office of the Secretary of the Commonwealth

## **950 CMR 32.00: Public Records Access Section**

32.01: Authority

32.02: Scope and Purpose

32.03: Definitions

32.04: General Provisions

32.05: Rights to Access

32.06: Fees for Copies of Public Records

32.07: Advisory Opinions

32.08: Appeals

32.09: Enforcement of Orders

(950 CMR 32.10 through 32.90: RESERVED)

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### **32.01: Authority**

950 CMR 32.00 is hereby issued by the Supervisor of Public Records under the authority of M.G. L. c. 66, § 1, as most recently amended.

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### **32.02: Scope and Purpose**

950 CMR 32.00 shall be construed to ensure the public prompt access to all public records in the custody of state governmental entities and in the custody of governmental entities of political subdivisions of the Commonwealth, and to ensure that disputes regarding access to particular records are resolved expeditiously and fairly.

950 CMR 32.00 shall not limit the availability of other remedies provided by law.

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### **32.03: Definitions**

As used in 950 CMR 32.00:

*Custodian* means the governmental officer or employee who in the normal course of his or her duties has access to or control of public records.

*Division* means the Division of Public Records, Office of the State Secretary.

*Governmental Entity* means any authority established by the General Court to serve a public purpose, any department, office, commission, committee, council, board, division, bureau, or other agency within the Executive Branch of the Commonwealth, or within a political subdivision of the Commonwealth. It shall not include the legislature and the judiciary.

*Public Records* means all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof or of any authority established by the General Court to serve a public purpose, unless such materials or data fall within one or more of the exemptions found within M.G. L. c. 4, § 7(26).

*Search time* means the time needed to locate, pull from the files, copy, and reshelve or refile a public record. However, it shall not include the time expended to create the original record.

*Segregation time* means the time used to delete or expurgate data which is exempt under M.G. L. c. 4, § 7(26) from non-exempt material which is contained in a paper public record.

*Supervisor* means Supervisor of Public Records.

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#### **32.04: General Provisions**

(1) *Office address.* All communications shall be addressed or delivered to:

Supervisor of Public Records  
Office of the State Secretary  
One Ashburton Place, Room 1719  
Boston, Massachusetts 02108

(2) *Office hours.* The offices of the Division shall be open from 8:45 a.m. to 5:00 p.m. each weekday except Saturdays, Sundays, and legal holidays.

(3) *Computation of Time.* Computation of any period of time referred to in 950 CMR 32.00 shall begin with the first day following the action which initiates such period of time. When the last day of the period so computed is a day on which the offices of the Division are closed, the period shall run until the end of the following business day.

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#### **32.05: Rights to Access**

(1) *Access to Public Records.* A custodian of a public record shall permit all public records within his or her custody to be inspected or copied by any person during regular business hours. In governmental entities which do not have daily business hours, a written notice shall be posted in a conspicuous location listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.

(2) *Promptness of Access.* Every governmental entity shall maintain procedures that will allow at reasonable times and without unreasonable delay access to public records in its custody to all persons requesting public records. Each custodian shall comply with a request as soon as practicable and within ten days.

- (3) Requests for Public Records. Requests for public records may be oral or written. Written requests may be submitted in person or by mail. It is recommended that a record requester make a written request where there is substantial doubt as to whether the records requested are public, or if an appeal pursuant to 950 CMR 32.08(2) is contemplated. A custodian shall not require written requests merely to delay production.
- (4) Description of Requested Records. Any person seeking access to a public record or any portion thereof shall provide a reasonable description of the requested record to the custodian so that he or she can identify and locate it promptly. A person shall not be required to make a personal inspection of the record prior to receiving a copy of it. A custodian's superior knowledge of the contents of a governmental entity's files shall be used to assist in promptly complying with the request.
- (5) Prohibition of Custodial Requests for Background Information. A custodian may not require the disclosure of the reasons for which a requester seeks access to or a copy of a public record. A custodian shall not require proof of the requester's identity prior to complying with requests for copies of public records.
- (6) Copies. Upon request, a person at his or her election, shall be entitled to receive in hand or by mail one copy of a public record or any desired portion of a public record upon payment of a reasonable fee as determined by 950 CMR 32.06.

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### **32.06: Fees for Copies of Public Records**

- (1) Except where fees for copies of public records are prescribed by statute, a governmental entity shall charge no more than the following fees for copies of public records:
  - (a) for photocopies of a public record no more than twenty cents per page;
  - (b) for copies of public records maintained on microfilm or microfiche no more than twenty-five cents per page;
  - (c) for requests for non-computerized public records a prorated fee based on the hourly rate of the lowest paid employee capable of performing the task may be assessed for search time and segregation time expenses, as defined by 950 CMR 32.03. In addition, a per page copying fee under 950 CMR 32.06(1)(a) and 950 CMR 32.06(1)(b) may be assessed;
  - (d) for computer printout copies of public records no more than fifty cents per page;
  - (e) for a search of computerized records the actual cost incurred from the use of the computer time may be assessed;
  - (f) for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing a copy may be assessed.

- (2) *Estimates.* A custodian shall provide a written, good faith estimate of the applicable copying, search time and segregation time fees to be incurred prior to complying with a public records request where the total costs are estimated to exceed ten dollars.
- (3) *Postage.* A custodian may assess the actual cost of postage.
- (4) *Inspection of Public Records.* A custodian may not assess a fee for the mere inspection of public records, unless compliance with such request for inspection involves “search time” in which case a fee under 950 CMR 32.06(1)(c) may be assessed.
- (5) *Waiver of Fees.* Every custodian, unless otherwise required by law, is encouraged to waive fees where disclosure would benefit the public interest.
- (6) *Street Census Computer Tapes and Mailing Labels - Reproduction Fees for City and Town Committee Chairman.*

Where “street list” data collected under G. L. c. 51, § 6-7, is compiled on computer tapes:

- (a) City or town registrars of voters shall provide, or cause their agents to provide, copies of said computer tapes to the chairman of each city or town committee for a fee of no more than one cent (\$0.01) per name, provided that a minimum fee of no more than ninety dollars (\$90.00) may be assessed. No fee assessed under 950 CMR 32.06(6)(a) shall exceed seven hundred fifty dollars (\$750.00).
- (b) City or town registrars of voters shall provide, or cause their agents to provide, sets of mailing labels made from said computer tapes to the chairman of each city or town committee for a fee of no more than two cents (\$0.02) per label, provided that a minimum fee of no more than fifty dollars (\$50.00) may be assessed.

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### **32.07: Advisory Opinions**

On written request of a custodian, the Supervisor may issue an advisory opinion with respect to any question concerning the provisions of M.G. L. c. 4, § 7 (26) or G.L. c. 66, § 10. Advisory opinions may also be issued upon the Supervisor’s initiative.

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### **32.08: Appeals**

- (1) *Denial by Custodian.* Where a custodian’s response to a record request made pursuant to 950 CMR 32.05(3) is that any record or portion of it is not public, the custodian, within ten (10) days of the request for access, shall in writing set forth the reasons for such denial. The denial shall specifically include the exemption or exemptions in the definition of public records upon which the denial is based. When exemption (a) of M.G. L. c. 4, § 7(26) is relied upon the custodian shall cite the operational statute(s). Failure to make a written response within ten days to any request for access shall be deemed a denial of the request. The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and M.G. L. c. 66, § 10(b).

- (2) *Appeal to the Supervisor.* In the event that a person requesting any record in the custody of a governmental entity is denied access, or in the event that there has not been compliance with any provision of 950 CMR 32.00, the requester may appeal to the Supervisor within ninety (90) days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. An oral request, while valid as a public record request pursuant to 950 CMR 32.05(3), may not be the basis of an appeal under 950 CMR 32.08.
- (3) *Disposition of Appeals.* The Supervisor shall, within a reasonable time, investigate the circumstances giving rise to an appeal and render a written decision to the parties stating therein the reason or reasons for such decision.
- (4) *Presumption.* In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.
- (5) *Hearings.* The Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00. Said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08. Nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.
- (6) *In-camera Inspections and Submissions of Data.* The Supervisor may require an inspection of the requested record(s) in camera during any investigation or any proceeding initiated pursuant to 950 CMR 32.08. The Supervisor may require the custodian to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.
- (7) *Custodial Indexing of Records.* The Supervisor may require a custodian to compile an index of the requested records where numerous records or a lengthy record have been requested. Said index shall meet the following requirements:
  - (a) the index shall be contained in one document, complete in itself;
  - (b) the index must adequately describe each withheld record or deletion from a released record;
  - (c) the index must state the exemption or exemptions claimed for each withheld record or each deletion of a record; and,
  - (d) the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt. Nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

- (8) *Conferences.* At any time during the course of any investigation or any proceeding, to the extent practicable, where time, the nature of the investigation or proceeding and the public interest permit, the Supervisor, may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding.
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### **32.09: Enforcement of Orders**

A custodian shall promptly take such steps as may be necessary to put an order of the Supervisor into effect. The Supervisor may notify the Attorney General or appropriate District Attorney of any failure by a custodian to comply with any order of the Supervisor.

### **Regulatory Authority**

G. L. c. 66, § 1; 950 CMR 32.00.

## Examples of Exemption (a) Statutes

Abatement Applications	G. L. c. 59, § 60
Absentee Ballots	G. L. c. 54, § 108
Air Pollution Control	G. L. c. 111, § 142B
Alcohol Treatment Records	G. L. c. 111B, § 11
Bank Examination Records	G. L. c. 167, § 2
Blind Persons, Records	G. L. c. 6, § 149
Business Schools, License Application	G. L. c. 75D, § 3
Capital Facility Construction Project Records	G. L. c. 30, § 39R
Conflict of Interest, Request for an Opinion	G. L. c. 268A, § 22
Consumer Protection Investigation	G. L. c. 93A, § 6(6)
Criminal Offender Record Information	G. L. c. 6, § 167
Delinquency, Sealing by Commissioner of Probation	G. L. c. 276, § 100B
Department of Social Services, Central Registry	G. L. c. 119, § 51F
Department of Youth Services Records	G. L. c. 120, § 21
Department of Public Health, Inventory of Health Care Services	G. L. c. 111, § 25A
Drug Addiction Treatment Records	G. L. c. 111E, § 18
Employment Agencies, Data	G. L. c. 140, § 46R
Employment Security Data	G. L. c. 151A, § 46
Exemption of Legislature from Public Records Law	G. L. c. 66, § 18
Evaluations of Special Needs Children	G. L. c. 71B, § 3
Executive Sessions	G. L. c. 30A, § 11A; G. L. c. 34, § 9F; G. L. c. 39, § 23B
Fetal Death Reports	G. L. c. 111, § 202
Firearms Bureau Records	G. L. c. 66, § 10(d)
Genetically Linked Diseases, Testing Records	G. L. c. 76, § 15B
Handicapped or Aged Persons, Financial Assistance	G. L. c. 66, § 17A
Handicapped Persons, Rehabilitation Commission	G. L. c. 6, § 84



Hazardous Substances Reports	G. L. c. 111F, § 21
Hazardous Waste Disposal Site Records	G. L. c. 21D, § 6
Hazardous Waste Facilities	G. L. c. 21C, § 12
Historical and Archaeological Sites and Specimen Inventory	G. L. c. 9, § 26A
Home Addresses and Telephone Numbers of Public Safety Personnel, Victims of Adjudicated Crimes and Persons Providing Family Planning Services	G. L. c. 66, § 10
Hospital Records	G. L. c. 111, § 70
Hospitals, Reports of Staff Privilege Revocation	G. L. c. 111, § 53B
Impounded Birth Records	G. L. c. 46, § 2A
Industrial Finance Agency, Commercial or Financial Information	G. L. c. 23A, § 31
Inspector General Investigations, Records	G. L. c. 12A, § 13
Insurance Records	G. L. c. 164, § 85
Juvenile Records	G. L. c. 119, § 60
Malignant Disease Reports	G. L. c. 111, § 111B
Massachusetts Commission Against Discrimination Investigatory Files	G. L. c. 151B, § 5
Massachusetts Technology Development Corporation, Corporate Records	G. L. c. 40G, § 10
Mental Health Facilities Records	G. L. c. 123, § 36
Merit Rating Plans, Motor Vehicle Insurance	G. L. c. 6, § 183
Natural Heritage Programs, Data Base	G. L. c. 66, § 17D
Patient Abuse Information; Intermediate Care Facilities for Mentally Retarded Citizens, Convalescent, Nursing or Rest Homes	G. L. c. 111, § 721
Patient's Rights to Confidentiality of Records; Medical and Mental Health Facilities	G. L. c. 111, § 70E
Personal Data	G. L. c. 66A, § 1
Protective Services Records, Aged Persons	G. L. c. 19A, § 23
Public Assistance Records, Aged Persons, Dependent Children, Handicapped Persons	G. L. c. 66, § 17A
Public Assistance, Wage Reporting System	G. L. c. 62E, § 8
Public Officers and Employees; Financial Interest Disclosure	G. L. c. 268B, § 3
Rape Reports	G. L. c. 41, § 97
Reyes Syndrome Report	G. L. c. 111, § 110B

Street Lists, Children Aged 3-17, Court Order Granting Protection	G. L. c. 51, § 4
Student Records	G. L. c. 71, § 34D
Venereal Disease Records	G. L. c. 111, § 119
Vocational Rehabilitation Records	G. L. c. 6, § 84

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